

On May 29, 2003, the ALJ conducted a preliminary hearing for the purpose of addressing claimant's motion for penalties. At issue was a request for payment of outstanding medical mileage as well as a request that the respondent's carrier provide

claimant with a scooter as recommended by Dr. Murati, the authorized treating physician. The ALJ issued an Order on June 3, 2003 requiring the mileage to be paid. The ALJ also retained jurisdiction over the issue involving the scooter, directing the respondent to depose Dr. Murati so that the physician could provide some insight on whether claimant was at maximum medical improvement and what benefit, if any, this scooter would provide to claimant. That deposition was taken on June 12, 2003, and thereafter, the ALJ issued an Order compelling respondent and its carrier to provide the mobility assistive device as recommended by Dr. Murati.

Respondent appealed this June 23, 2003 Order. The Board established a briefing schedule for the parties. Respondent, as appellant, was to file its brief on or before July 28, 2003. No brief was filed nor is there any indication within the Amended Appeal of Order, filed by respondent and its carrier, disclosing the basis for the appeal, other than a reference to K.S.A. 44-551(b)(1).

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an administrative law judge if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.¹

Although respondent and its carrier have made the effort to file an appeal with the Board, no basis for this appeal has been given. The notice of appeal merely requests a hearing before the Board pursuant to K.S.A. 44-551(b)(1). There is no letter, no brief, nor any indication whatsoever upon what basis respondent believes it is entitled to an appeal nor the facts upon which it bases its contention that the ALJ's actions exceeded his authority.²

If respondent's contention is the ALJ exceeded his authority in issuing an order to provide medical assistive devices, this argument must fail. Such an issue does not fall within the Board's jurisdiction. K.S.A. 44-534a grants the ALJ the jurisdiction to decide

¹ See K.S.A. 44-551.

² See K.A.R. 51-18-3.

issues dealing with ongoing medical treatment. Whether a scooter is appropriate in this case is a medical treatment issue and is not one of the issues listed in K.S.A. 44-534a. As such, the Board finds it does not have jurisdiction to consider the issue raised by respondent at this point in the proceedings.

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.³ Accordingly, respondent and carrier's appeal is dismissed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that appeal filed by respondent and its carrier is dismissed.

IT IS SO ORDERED.

Dated this _____ day of September 2003.

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Richard J. Liby, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. 1, 869 P.2d 755 (1994).